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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/531,047	04/12/2005	Shouchirou Sawa	MAM-061	2630
20374 7590 01/07/2009 KUBOVCIK & KUBOVCIK SUITE 1105 1215 SOUTH CLARK STREET ARLINGTON, VA 22202				
EXAMINER				
HAN, KWANG S				
ART UNIT		PAPER NUMBER		
1795				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

## Application No.

10/531,047

## Applicant(s)

SAWA ET AL.

## Examiner

Kwang Han

## Art Unit

1795

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 09 September 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date: \_\_\_\_\_

**LITHIUM SECONDARY BATTERY AND METHOD FOR PRODUCING SAME**

Examiner: K. Han    SN: 10/531,047    Art Unit: 1795    December 23, 2008

**DETAILED ACTION**

1. The Applicant's amendment filed on September 9, 2008 was received.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

***Claim Rejections - 35 USC § 103***

3. The claim rejection under 35 U.S.C. 103(a) as unpatentable over Fukui et al. in view of Masatoshi et al. on claims 1-28 is withdrawn, because Applicant's arguments are persuasive.
4. The claim rejection under 35 U.S.C. 103(a) as unpatentable over Fukui et al. and Masatoshi et al. further in view of Lee et al. on claim 29 is withdrawn, because Applicant's arguments are persuasive.
5. Claims 1-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fukui et al. (WO/2002/21616, using US 2004/0043294 for translation and citations) in view of Hiroshi et al. (JP 10-040958, machine translation).

Regarding claim 1, Fukui et al. is directed towards a rechargeable lithium battery (abstract) comprised of the following:

- negative electrode made by sintering a layer of a mixture of active material particles containing silicon or silicon alloy [abstract],
- a binder on a surface of a conductive metal foil current collector [34],
- a positive electrode [16], and
- a nonaqueous electrolyte [16].

Fukui discloses the use of electrolyte solvents such as carbonate's [41] and the active material comprised of materials that alloy with lithium but is silent towards the nonaqueous electrolyte containing carbon dioxide which is dissolved therein.

Hiroshi teaches a non-aqueous electrolyte secondary battery comprised of a negative active material compound including silicon [0017] with carbon dioxide dissolved in the electrolyte [Abstract] for the benefit of forming a battery having superior charge and discharge characteristics and less deterioration of discharge capacity due to charge and discharge repetition. It would have been obvious to one of ordinary skill in the art at the time of the invention to apply dissolved carbon dioxide gas within the electrolyte solution for a rechargeable lithium battery because Hiroshi teaches it provides for superior charge and discharge characteristics.

Regarding claim 2, Fukui teaches the sintering being performed under a non-oxidizing environment [9].

Regarding claim 3, the teachings of Fukui and Hiroshi as discussed above for claim 1 are herein incorporated. Fukui further discloses active material particles that

have a tendency to undergo a porosity (volume) increase that advances inside from particle surfaces during charge and discharge [18].

Regarding claims 4-6, Hiroshi teaches an amount of carbon dioxide dissolved in a nonaqueous electrolyte to sufficient to provide charge-discharge cycle characteristics [0012] teaching it as a result effective variable. It would have been obvious to one of ordinary skill in the art at the time of the invention to vary the carbon dioxide content since it has been held that discovering the optimum ranges for a result effective variable such as carbon dioxide content involves only routine skill in the art in the absence of showing of criticality in the claimed range (MPEP 2144.05).

Regarding claim 7, Fukui discloses a battery construction where the electrolyte and the electrodes are enclosed in a structure [0062-0064] (Figures 1 and 2).

Regarding claim 8, Fukui teaches an electrolyte which contains a cyclic carbonate [41].

Regarding claim 9, Fukui teaches an electrolyte which contains a mixed solvent of a cyclic carbonate and a chain carbonate [41].

Regarding claim 10-12, Fukui teaches a cyclic carbonate which includes ethylene carbonate and propylene carbonate [41].

Regarding claim 13, Fukui teaches a chain carbonate which includes at least one of dimethyl carbonate, diethyl carbonate, and methyl ethyl carbonate [41].

Regarding claims 14 and 15, Fukui teaches a nonaqueous electrolyte that further contains a fluorine containing compound which is a lithium salt [41].

Regarding claim 16 and 17, Fukui teaches a fluorine containing lithium salt of the type  $\text{LiXF}_y$  or  $\text{LiN}(\text{C}_m\text{F}_{2m+1}\text{SO}_2)(\text{C}_n\text{F}_{2n+1}\text{SO}_2)$  [41] (Examples:  $\text{LiPF}_6$  and  $\text{LiN}(\text{CF}_3\text{SO}_2)(\text{C}_4\text{F}_9\text{SO}_2)$ ).

Regarding claim 18, Fukui teaches an active material particle with the most preferable mean particle diameters of  $10\mu\text{m}$  or below [27].

Regarding claim 19, Fukui teaches a current collector which has an arithmetic mean surface roughness  $R_a$ , of at least  $0.2\mu\text{m}$  [18].

Regarding claims 20 and 21, Fukui teaches a current collector which comprises an electrolytic copper foil, an electrolytic copper alloy foil, or a metal foil having an electrolytic copper or copper alloy surface layer [22].

Regarding claim 22 and 23, Fukui teaches a binder which remains even after a heat treatment for sintering and comprised of polyimide [35].

Regarding claim 24, Fukui teaches active material particles composed of silicon [26].

Regarding claim 25, Fukui teaches an electric conductor which is mixed in the mixture layer [57].

Regarding claim 26, Fukui teaches a method for fabricating a rechargeable lithium battery comprising the step of:

- providing a layer of a mixture of active material particles containing silicon and/or a silicon alloy [9],
- a binder on a surface of a conductive metal foil as a current collector [9],

- sintering the mixture layer while being placed on the surface of the conductive metal foil to prepare the negative electrode [9], and
- assembling the battery using the negative electrode, positive electrode, and nonaqueous electrolyte [16].

Fukui discloses the use of electrolyte solvents such as carbonate's [41] and the active material comprised of materials that alloy with lithium but is silent towards the nonaqueous electrolyte containing carbon dioxide which is dissolved therein.

Hiroshi teaches a non-aqueous electrolyte secondary battery comprised of a negative active material compound including silicon [0017] with carbon dioxide dissolved in the electrolyte [Abstract] for the benefit of forming a battery having superior charge and discharge characteristics and less deterioration of discharge capacity due to charge and discharge repetition. It would have been obvious to one of ordinary skill in the art at the time of the invention to apply dissolved carbon dioxide gas within the electrolyte solution for a rechargeable lithium battery because Hiroshi teaches it provides for superior charge and discharge characteristics.

Regarding claim 27, Fukui teaches the sintering being performed under a non-oxidizing environment [9].

Regarding claim 28, Hiroshi teaches a step of dissolving carbon dioxide in the nonaqueous electrolyte including pressurizing with gaseous carbon dioxide into the nonaqueous electrolyte [0010].

Regarding claim 29, Fukui is silent to the use of a carbon dioxide atmosphere during the assembly of the rechargeable lithium battery. Hiroshi teaches a method of

forming the electrochemical cell under a carbon dioxide content environment for the benefit of enclosing carbon dioxide within the cell [0012]. It would have been obvious to one of ordinary skill in the art at the time of the invention to assemble the electrochemical cell under a carbon dioxide environment because Hiroshi teaches it allows for enclosing carbon dioxide within the cell.

### ***Double Patenting***

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claim 1, 4-6, 8-10, 14-17, 20, 21, 26, 28, and 29 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-7, 9-14, 23-25 of copending Application No. 10/531045. Although the conflicting claims are not identical, they are not patentably distinct from each other



because claims 1 and 26 are generic to all that is recited in claims 1 and 23 of application 10/531045. Claims 1 and 23 of application 10/531045 is anticipated by claims 1 and 26 specifically in that the sintering process can form a crystalline or noncrystalline thin film on the current collector.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Contact/Correspondence Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kwang Han whose telephone number is (571) 270-5264. The examiner can normally be reached on Monday through Friday 8:00am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dah-Wei Yuan can be reached on (571) 272-1295. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/K. H./  
Examiner, Art Unit 1795

/Dah-Wei D. Yuan/  
Supervisory Patent Examiner, Art Unit 1795